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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

AUG 11 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

DOUBLE W, INC.

DON TIMMERMAN BROADCASTING, INC.

For Construction Permit for a
New FM Station on Channel 253
in Cedar Falls, Iowa

MM Docket No. 93-216

File No. BPH-920506MD

File No. BPH-920507MA

To: The Honorable Joseph Stirmer
Chief Administrative Law Judge

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND TO HOLD PROCEDURAL DATES IN ABEYANCE

Double W, Inc. ("Double W") and Don Timmerman Broadcasting, Inc. ("Timmerman"), by their attorneys, hereby petition for approval of the attached settlement agreement. As set forth therein, the settlement agreement will result in a universal settlement of this proceeding, thereby expediting service to the public and saving Commission resources.

1. The parties have entered into the settlement agreement attached hereto as Exhibit A. Subject to the terms set forth in this agreement, Thin Air Investments, L.C. ("Thin Air"), a new Iowa limited liability company, will be formed. The principals of Double W, Diane and Steven Winkey and Junean and Richard Witham, and the sole shareholder of Don Timmerman Broadcasting,

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Inc., Don E. Timmerman, will be principal owners of Thin Air.¹
This is a bona fide merger of interests between the parties.

2. The parties are now engaged in the final steps toward creation of Thin Air. They intend to submit an amendment in the near future which spells out the details of the new entity in greater detail. In addition, the parties intend to specify the engineering proposal to be adopted by the merged entity in an amendment to be submitted in the near future.

3. Approval of the proposed merger between the parties will serve the public interest. Approval of the settlement will simplify the hearing process and eliminate unnecessary litigation, thereby conserving the resources both of the parties and of the Commission. In addition, approval of the proposed merger will speed initiation of a new FM service to Cedar Falls, Iowa. Therefore, upon submission of the amendments which further detail the proposed merger, and specify the proposed technical facilities to be utilized by the parties, this agreement should be approved.

4. The parties believe that a twenty day period should be adequate for the completion of organizational activities relating to the merged entity and for review and finalization of their technical proposal. They request that procedural dates be

¹ A. Miller Roskamp, who was not a principal of either applicant, will also become a principal of Thin Air, holding a minority interest in that company.

deferred for at least twenty days in order to complete and file the contemplated amendments.

5. For all the above reasons, the joint parties respectfully request that the presiding Chief Administrative Law Judge take the following actions:


- a. Suspend all procedural dates pending action upon this petition.
- b. Approve the attached settlement agreement between Double W and Timmerman.
- c. Subject to review and approval of the amendments to be filed in the near future, approve the merger of the parties, approve requested changes to the technical proposals of the parties, dismiss the applications of Double W and Timmerman and grant the application of Thin Air.

The above actions will facilitate settlement and lead to a speedy resolution of this proceeding.

Respectfully submitted,

DOUBLE W, INC.

FISHER, WAYLAND, COOPER
and LEADER
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

BY: 
Clifford M. Harrington
Kathryn R. Schmeltzer

DON TIMMERMAN BROADCASTING, INC.

PEPPER & CORAZZINI
1776 K Street, N.W.
Washington, D.C. 20006
(202) 296-0600

BY: _____
Gregg P. Skall

Dated: August 11, 1993

-3-

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5. For all the above reasons, the joint parties respectfully request that the presiding Chief Administrative Law Judge take the following actions:

- a. Suspend all procedural dates pending action upon this petition.
- b. Approve the attached settlement agreement between Double W and Timmerman.
- c. Subject to review and approval of the amendments to be filed in the near future, approve the merger of the parties, approve requested changes to the technical proposals of the parties, dismiss the applications of Double W and Timmerman and grant the application of Thin Air.

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DON TIMMERMAN BROADCASTING, INC.

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1776 K Street, N.W.
Washington, D.C. 20006
(202) 296-0600

BY: Gregg P. Skall
Gregg P. Skall

Dated: August 11, 1993

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DBSH & I LAW

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DICK WITHAM FORD

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DICK WITHAM

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AGREEMENT

THIS AGREEMENT is entered into this 27th day of July, 1993, by and between Junean E. Witham, Richard J. Witham, Diane E. Winkey, Steven A. Winkey, Donald E. Timmerman, and A. Miller Rockamp.

RECITALS

- A. Junean E. Witham, Richard J. Witham, Diane E. Winkey, and Steven A. Winkey have jointly filed an application for a new FM radio station in Cedar Falls, Iowa, (the "Station"), under the name of Double W, Inc., ("Double W").
- B. Donald E. Timmerman has filed for the same station under the name of Don Timmerman Broadcasting, Inc., ("Timmerman"), and with such application has filed a bond to share profits with A. Miller Rockamp.
- C. The parties to this agreement now desire to merge the applications of Double W and Timmerman in order to avoid a lengthy and costly FCC hearing process, and to create a new entity (the "new company") for the purpose of owning and operating the new station.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The parties will immediately inform their Washington, D.C., Federal Communications Commission counsel of the merger of applications intentions and instruct such counsel to take the necessary steps to inform the FCC of the merger and that no hearing will be necessary, and to set in motion the procedure for the issuance of a construction permit at the earliest possible time.

2. A new entity, either a limited liability company or a corporation, will be created which will be organized substantially as follows:

- A. Unit or stock ownership will be issued in the following proportions:

Donald E. Timmerman	-	18%
A. Miller Rockamp	-	18%
Junean E. Witham	-	16%
Richard J. Witham	-	16%
Diane E. Winkey	-	16%
Steve/A. Winkey	-	16%

- B. All unitholders or shareholders will be directors.

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DBSH & I LAW

DICK WITHAM

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- C. No new members or shareholders will be admitted without the unanimous consent of the then present unitholders or shareholders.
- D. The parties will enter into an agreement which will assure the company or the members or shareholders that they will have the right to acquire units or stock in the event of the bankruptcy or the desire of a unitholder or shareholder to voluntarily sell. Nothing herein shall require the estate of a deceased unitholder or shareholder to sell stock or units. The parties shall negotiate with respect to a comprehensive and reasonable buy-sell agreement between them as shareholders or unitholders.
- E. Profits and losses shall be allocated pro-rata to ownership rights unless otherwise agreed upon by the unitholders or shareholders.
- F. Initially a minimal capital contribution of \$100.00 will be made by each unitholder or shareholder, it being the intention that initially the capital needs of the company will be satisfied by borrowing.
- G. If additional capital is later required which cannot be met by normal bank borrowing methods, then there shall be a shareholder's agreement which will provide for cash calls and which will allow for the changing of ownership percentages if a party fails to meet the cash call.
- J. Double W and Timmerman have each incurred reasonable expenses in the pursuit of their separate FCC applications. Upon presentation of reasonable documentation, such expenses shall be assumed as a new company obligation. At the time of the signing of this agreement, the expenses of Timmerman are approximately \$20,500.00, and the expenses of Double W are approximately \$24,000.00. The parties acknowledge that there will be additional expenses incurred to complete the merger of the applications, and to follow through with the creation of the new company.
4. The parties have agreed that the National Bank of Waterloo will be the first choice of the new company for a banking relationship.
5. Diane ^{M.} Winkley will be a full time employee of the company, at a salary commensurate with her responsibility and experience and consistent with salaries paid for similar positions within the broadcasting industry.
KNOX DON E. TIMMERMAN
6. Junean E. Witham will be employed, either full or part time, upon such terms and conditions as will be agreeable to the managers or directors of the new company.

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7. It is acknowledged that other unitholders or shareholders may also provide consulting services to the new company upon such terms and conditions as will be reasonably agreed to by the managers or directors or the new company for similar work done within the broadcasting industry.

8. The officers of the company will be appointed by the managers or directors.

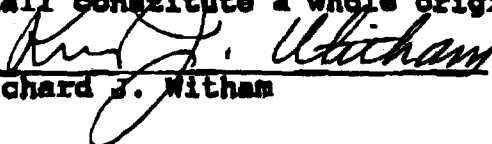
9. The parties acknowledge to each other that they are each relying on the representations made in this agreement to merge applications that they are giving up valuable rights which they would not do but for this agreement.

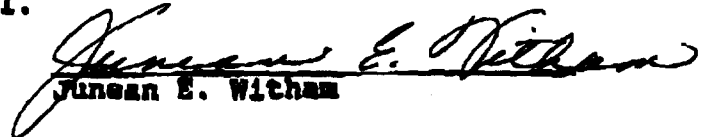
10. The parties, acting in reliance on each other, agree that they will proceed expeditiously and in good faith, to complete the merger of the application for a new FM radio station in Cedar Falls, Iowa, and will use their best efforts to reasonably, and in a business-like fashion, complete the creation of a new company (either limited liability company or corporation) which will pursue diligently the merged application for Station and a construction permit, and to do all things necessary to complete the construction of a Station in a timely fashion.

11. The parties specifically agree that upon the signing of this agreement, they will not take any action to separately pursue or perfect the application of Double W or Timmerman, but will work together in pursuit of the merged application.

12. This agreement is subject to FCC approval of the merger of the applications pending before the FCC of Double W, Inc., and Don Timmerman Broadcasting, Inc. The parties agree that this agreement may be amended, as may be required by FCC counsel, in order to comply with applicable FCC Regulations concerning the merger of applications.

14. In order to expedite the execution of this agreement, the parties are transmitting the agreement by fax, and will cause their signatures to be affixed so that they will each separately sign an agreement. The separately signed agreements, when taken together, shall constitute a whole original.


Richard J. Witham


Junesan E. Witham

Diane K. Winkey

Steven A. Winkey

Donald E. Timmerman

A. Miller Roskamp

-3-

7. It is acknowledged that other unitholders or shareholders may also provide consulting services to the new company upon such terms and conditions as will be reasonably agreed to by the managers or directors or the new company for similar work done within the broadcasting industry.

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Richard J. Witham

Junean E. Witham

Dick X. Winkey

Steven A. Winkey

Donald E. Timmerman

A. Miller Hoskamp

* *Subject to a Shareholder agreement*
attest to all parties D.T. 7/28/93

END

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ROSKAMP-LEASING TEL:319-266-9907
08/10/93 10:14 319 234 8029

DBSH & I LAW

Aug 10.93
DBSH & I LAW

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FROM TIMMERMAN AND ASSOC.

07/26/93 16:10 319 234 8029

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DBSH & I LAW

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-3-

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Richard J. Witham

Juneau H. Witham

STEVEN A. WILSON

STEVEN A. WILSON

Donna H. Timmerman

A. Miller Roskamp

* Signed by all parties to agreement

Satisfactory to all parties DT. 7/28/93

DECLARATION

I, Diane M. Winkey, hereby declare under penalty of perjury:

1. I am President of Double W, Inc. ("Double W"), applicant for a new FM station at Cedar Falls, Iowa.
2. Double W did not file its application for a new FM station at Cedar Falls, Iowa, for purposes of reaching a settlement.
3. Except as set forth in the settlement agreement with Don Timmerman Broadcasting, Inc. ("Timmerman"), Double W has neither promised nor paid any party any consideration for dismissal of the Timmerman application, and has neither been promised nor paid by any party any consideration for dismissal of the Double W application.
4. The approval of the proposed settlement between Double W and Timmerman, which contemplates the merger of their interests into a new company, Thin Air Investments, L.C., is in the public interest as it would expedite service to Cedar Falls and avoid the cost to the government and the parties of a lengthy hearing.
5. The foregoing is true and correct to the best of my knowledge and belief.


Diane M. Winkey

Dated: August 10, 1993

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Aug. 10. 1993

6:02PM

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FISHER, WAYLAND

FAX NO. 3183548504

NO. 4420

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DECLARATION

I, Don E. Timmerman, hereby declare under penalty of perjury:

1. I am President of Don Timmerman Broadcasting, Inc. ("Timmerman"), applicant for a new FM station at Cedar Falls, Iowa.
2. Timmerman did not file its application for a new FM station at Cedar Falls, Iowa, for purposes of reaching a settlement.
3. Except as set forth in the settlement agreement with Double W, Inc. ("Double W"), Timmerman has neither promised nor paid any party any consideration for dismissal of the Double W application, and has neither been promised nor paid by any party any consideration for dismissal of the Timmerman application.
4. The approval of the proposed settlement between Double W and Timmerman, which contemplates the merger of their interests into a new company, Thin Air Investments, L.C., is in the public interest as it would expedite service to Cedar Falls and avoid the cost to the government and the parties of a lengthy hearing.
5. The foregoing is true and correct to the best of my knowledge and belief.


Don E. Timmerman

Dated: August 10, 1993

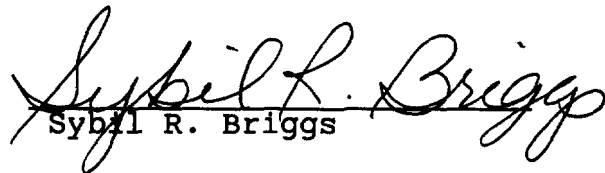
CERTIFICATE OF SERVICE

I, SYBIL R. BRIGGS, do hereby certify that I have this 11th day of August, 1993, mailed by first class United States mail, postage prepaid, copies of the foregoing "JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND TO HOLD PROCEDURAL DATES IN ABEYANCE" to the following:

*The Honorable Joseph Stirmer
Chief Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 224
Washington, D.C. 20554

*James Shook, Esq.
Mass Media Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 7212
Washington, D.C. 20554

Gregg P. Skall, Esq.
Pepper & Corazzini
1776 K Street, N.W.
Suite 200
Washington, D.C. 20554


Sybil R. Briggs

*By Hand Delivery